HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.10067 of 2007

Date: 18-12-2007

Between:

S.Eswara Rao

..... PETIT

AND

The Commissioner of Endowments,
Tilak Road, Hyderabad and 3 others.

.....RESPONI

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No. 10067 of 2007

O R D E R:

Heard Sri Y.V. Ravi Prasad, learned counsel representing the petitioner, Sri V.T.M. Prasad, learned Assistant Government Pleader for Endowments, and Sri K.S.Murthy, learned counsel representing respondent No.4.

2. S. Eswara Rao, petitioner, filed the present writ petition for issuance of a writ of *Mandamus* declaring the action of the second respondent in issuing proceedings Rc.No.A3/11042/2006, Administration, dated 22-12-2006, according permission to demolish Sri Bhramaramba Malleswara Swamy Temple (for short 'the Temple') situated in Gundugolanu Village, Bhimadole Mandal, West Godavari District, as illegal, arbitrary, highhanded and violative of the provisions of the Andhra Pradesh Charitable & Hindu Religious Institutions & Endowments Act, 1987 and consequently to direct the respondents not to demolish the Temple.

3. Sri B.Pundarikakshudu, respondent No.4 was impleaded as a party by the order of this Court dated 21-08-2007 in W.P.M.P.No.21903 of 2007.

4. Sri Ravi Kumar, learned counsel representing the petitioner, had taken this Court through the respective stands taken by the parties and would maintain that the petitioner is a permanent resident of Gundugolanu Village and a devotee of Sri Bhramaramba Malleswara Swamy and the Temple is an ancient temple having the heritage value. It is further contended by the learned counsel that due to the rival politics in the village and for selfish reasons, an order of demolition had been obtained, though the structure of the Temple is in a very good condition, and in such circumstances, the petitioner being left with no other option, approached and this Court and filed this writ petition.

5. Learned Assistant Government Pleader for Endowments had placed before this Court the report submitted by the Assistant Director, A.S.P.

Government Museum & R.I., Kakinada, after inspecting the Temple personally, and also placed reliance on the proceedings of the Commissioner, Endowments Department, A.P., Hyderabad, and would maintain that in the facts and circumstances of the case, inasmuch as after taking all precautions and on being satisfied to demolish the temple, the second respondent is proceeding with the impugned action, and therefore, the writ petition is liable to be dismissed.

6. Sri V.T.M. Prasad, learned counsel representing third respondent institution, had taken this Court through the contents of the counter-affidavit and would submit that the action impugned is a justified one.

7. Sri K.S.Murthy, learned counsel representing respondent No.4 had taken this Court through the contents of the counter- affidavit and also had drawn the attention of this Court as to how unnecessarily the village groups are litigating when the fourth respondent is trying to proceed with the offer of further construction of the Temple in the interest of the devotees at large.

8. The petitioner stated that he is a permanent resident of Gundugolanu village and a devotee of Sri Bhramaramba Malleswara Swamy and that he used to visit the Temple in the village. The temple is an ancient structure constructed long ago and has heritage value. All the villagers had developed strong
religious belief upon Sri Bhramaramba Malleswara Swamy and the said Temple is the evidence of ancient structures and
culture as a whole. In addition to the Goddess Bhramaramba
and Sri Malleswara Swamy, some other temples like
Sri Subrahmanyeswara Swami, Sri Ayyappa Swami etc., are also available in the premises of the main Temple. In fact, the Temple is in Shivalayam street, which is away from the traffic area and the same does not create any inconvenience to the general public or to the vehicular traffic. It is also stated that as the matter stood thus, rival politics in the village went to the extent of obtaining an order for demolition of the Temple for their selfish and egoistic ideas. In fact, the structures of the Temple are still in good condition and they did not require any repair whatsoever. Strangely, the third respondent under

the influence of the village politics recommended the first and second respondents for demolition of the Temple. Unfortunately, the second respondent not even getting the structures of the Temple verified with qualified engineers and sthapathies, passed an order in Rc.No.A3/11042/2006, Administration, dated 22-12-2006 according permission to demolish the Temple, but it does not contain any reason for demolition of the Temple even though all the villagers are opposing the action and sentiment of demolition. The first and second respondents strongly decided to demolish the Temple. If the Temple is demolished, it would have its own repercussions in the entire village and it would create law and order problem, apart from affecting the religious sentiments of the people of the entire village. The second and third respondents, rather protecting and preserving the ancient Temple and the structures of the Temple, unfortunately taken hasty decision for demolition of the temple. In such circumstances, the petitioner is left with no other option except approaching this Court for appropriate relief.

9. This Court, ordered notice before admission on 09-05-2007 and directed the respondents not to demolish the Temple in question for a period of two months and the interim order was extended further for a limited period. Since it was represented that the Assistant Commissioner Endowments, Eluru, was not furnishing the records to the Government Pleader concerned, this Court directed the Officer concerned to attend the Court. In pursuance of the said direction, the Assistant Commissioner of Endowments concerned was present before this Court on
20-09-2007 and his further presence was dispensed with.

10. Since the learned Assistant Government Pleader for Endowments represented that the records are available, this Court on 27-09-2007, issued *Rule nisi* and thus the matter is coming up for final hearing.

11. In the counter affidavit filed by the first respondent, it is averred that the Assistant Director of Archeological Department, Kakinada, visited the Temple on 11-05-2007 and submitted his report to the Director of Archeological Department, Hyderabad stating that the Temple has no heritage value. It is

further stated that Sri Bhogaraju Pundarikakshudu, a resident of Gundugolanu village, where the Temple is situated, gave a representation dated 16-09-2006 to the Manager of the Temple offering to bear the expenditure of Rs.12 lakhs for reconstruction of the Temple.

He stated in his representation that since the Temple is lower in level than the road and that water is stagnating around the Temple causing inconvenience to the devotees, he offered to re-construct the Temple as per the Agama Sastra under the supervision of the Endowments Department. It is submitted that Sri Bhramaramba Malleswara Swamy Temple, Sri Subramanya Swamy Temple, Navagraha Temple etc., are in the same complex. The Manager of the Temple submitted a report dated 19-10-2006 to the Assistant Commissioner, Endowments Department, Eluru stating that the Temple is lower in level by 4 feet from the road, resulting in stagnation of water and causing inconvenience to the devotees and that Sri B.Pundarikakshudu offered to re-construct the

Temple as per the plans given and approved by the Department. The Assistant Commissioner of Endowments Department, Eluru submitted a letter dated 19-10-2006 to the Commissioner of Endowments Department, to accord permission for reconstruction of the Temple. In the said letter, he also mentioned that the daily poojas of the Temple are conducted with the income derived on Ac.5.20 cents of land owned by the Temple and there is no other source of income. The Deputy Executive Engineer, Endowments Department, Kakinada sent a letter dated 11-10-2006 to the Manager and Assistant Commissioner, Endowments Department, Eluru referring to the conditions imposed by the Deputy Sthapathi, Endowments Department, Kakinada. Thereafter, the Commissioner, Endowments Department, Hyderabad issued proceedings in Rc.No.S1/42324/06, dated 28-11-2006, giving permission to execute the work for construction of entire complex to Sri Bhramaramba Malleswara Swamy Temple, through donor

Sri Bhogaraju Pundarikakshudu with the following conditions:

1. The work shall be executed with the funds of the Donor only and no amount is spent on the work in any way from the institution of Endowments Department.

2. The work shall be executed according to the plan and location approved by the Endowments Department. It shall be carried out under the close supervision of the Endowments Department Officials like, Engineers and Sthapathies.

3. The work should be completed with in the stipulated period and should be handed over to the Endowments Department/Temple unconditionally and the Donor will not have any right on the structure/property in any way.

4. The Endowments Department have a right to alter/remove partly or whole structure if it is found essential in future, under any developmental / renovation / improvement, programme of the temple/institution and the Donor shall not have any right to object or claim compensation of the structure constructed by them and handed over to the Department.

5. The constructions will be inspected by Departmental Engineers and action will be taken as per the suggestions of Departmental Engineers and Sthapathies.

6. This department reserve the right of addition/deletion/modification of any/all of the above conditions if found necessary in the interest of the Department/Institution.

12. In the counter-affidavit, the further averment mentioned in paragraph No.3 of the affidavit filed in support of the writ petition that the impugned order was passed under the influence of the politicians and for the benefit of minority group of villagers is denied. The allegations that the villagers are opposing demolition of the Temple and reconstruction of the same is effecting their sentiments, and that it will have repercussions in the entire village and it will create law and order problem, are also denied. Since the Temple is preserved and it is only being reconstructed, there is no hasty decision in reconstructing the Temple. It is further stated that it appears that the petitioner was set up by one Madduru Brahmaiah, a resident of Gundugolanu village. The petitioner is only a daily wage NMR. Sri Madduru Brahmaiah

unsuccessfully tried to oppose the reconstruction of the Temple by filing O.S.No.90 of 2007 on the file of learned Principal Junior Civil Judge, Eluru for declaration that the proceedings of the Assistant Sthapathi in ENDTS/AS/ELR/DRG No.145/06, dated 28-11-2006 (Document No.7) are illegal and also filing I.A.No.255/07 for temporary injunction. The Advocate Commissioner, who was appointed as per the orders of the Court in I.A.No.256/07, visited the Temple and filed a report. The learned Principal Junior Civil Judge, Eluru heard the matter and dismissed the application filed for temporary injunction. It is further stated that there appears to be some enmity between the Donor-B.Pundarikakshudu and Modduru Brahmaiah and so Modduru Brahmaiah having failed in his attempts to stop the reconstruction of the Temple, set up the petitioner to initiate this proceedings.

13. In the counter affidavit filed by the second respondent more or less the similar stand had been taken as that of the first respondent and specific stand had taken that one Modduru Brahmaiah has filed O.S.No.90 of 2007 on the file Principal Junior Civil Judge, Eluru seeking to declare that the proceedings ENDTS/AS/ELR/DRG.No. 145/2006 dated 28-11-2006 issued by the authorities for demolition and reconstruction of the Temple is null and void and for other reliefs, and that the said Brahmaiah also filed I.A.No.255 of 2007 in O.S.No.90 of 2007 for temporary injunction and also filed I.A.No.256 of 2007 for appointment of an Advocate commissioner to inspect the Temple premises and to submit a report. The learned Principal Junior Civil Judge, Eluru appointed an Advocate Commissioner and he filed a detailed report after inspecting the Temple premises. The learned Principal Junior Civil Judge, Eluru, after elaborate enquiry, dismissed I.A.No.255 of 2007 on 04-06-2007 filed for temporary injunction and the said suit is pending. The petitioner is a close associate of Brahmaiah and a daily labourer and at the instance of Brahmaih the present writ petition had been filed. Further specific stand had been taken that this litigation was thought of with a mala fide intention.

14. The proposed party, B.Pundarikakshudu, who came on record, had stated that he is a native of Gundugolanu village; that he worked in Indian Overseas Bank and took voluntary retirement in 2001; and that he came back

to his village and has been staying in the village. He and his family members are devotees of Sri Bhramaramba Malleswara Swamy and in fact it is their family deity. Since the days of his forefathers they have been looking after the Institution in the village. He had also narrated as to how from generations they have been making donations, how they are interested in the Institution, how his family members had decided for reconstruction of the Temple complex, how they had taken extraneous guidance and how the Endowments Department had deputed its Sthapathi and recommended the structural designs to be followed. Several other factual details had also been narrated and the substantial stand taken by other respondents had been represented in his counter affidavit.

15. The letter, dated 14-05-2007 addressed by the Assistant Director (Museums), A.S.P. Govt. Museum & RI, Kakinada to the Director, Archeology and Museums, Government of A.P., Hyderabad has been placed before this Court and the same reads as hereunder:

Govt. of A.P.

"From: To:
Sri I.D.V.Prasadbabu, M.A.,B.Ed., The Director,
Assistant Director, Archaeology and Museum
ASP. Govt. Museum & R.I, Govt. of A.P
Kakinada. Hyderabad.

Lr.Ref.No.B/89/07 dt:14/5/07

Respected Madam,

Sub: Old temple – Sri.Bramaramba Malleswara Swamy Temple at Gundugolanu village Bhimadolu Mandal, W.G.District submission of brief report with photographic evidence – regarding.

Ref: Your letter Rc.No.H3/1105/07 dt:5/5/07

- : -

In obedience to the reference cited, I have personally visited the Sri Brahmarambha Malleswara Swamy Temple, Gundugolanu Village, Bhimadolu Mandal, W.G.District on 11/5/07. So for your kind information and for examination, I herewith submit a brief report on the said temple along with 6 Photographs. In my examination I did not find any archeological importance at this temple and further more it not our protected monument.

Thanking you Madam,

Yours faithfully,

Enclosures: 6 Photos Assistant Director (Museums)
A.S.P. Govt. Museum & R.I
KAKINADA"

16. The brief report of Sri Bhramaramba Malleswara Swamy Temple, Gundugolanu village, West Godavari District dated 14-05-2007 had also been placed before this Court and the same reads as hereunder:

> "The said temple has mandapa, antarala and Garbhagriha. It is also having entrance gopura to a level of nearly 25 to 30 feet. The temple is constructed in a land of 400 square yards. As per the legal heirs of the temple this temple is constructed in between 1928-30 by Smt. Laxmi Narasamma, W/o.Bhogaraju Veera Venkayya, local resident of Gundugolanu Village.
>
> The temple upper basement is constructed with redsand stone up to 4 feet level and the remaining walls and sikhara portion is with brick and cement. The entire temple is plastered with cement in the time of renovations. The stone sculptures in the temple are latest. The Garbha griha is with linga with Panavatta. The temple Garbha-griha walls are attached with granite slabs and the temple complex ground is paved with "Naparallu". In the premises of this said temple one recently constructed i.e., 1993 Ayyappa Swamy temple is existing.
>
> Moreover it is not a protected temple and it is not having any archeological importance. As per the plagues attached to the inside compound wall of the temple show that some Venkamma, W/o.Mavulati Bapiraju has donated and erected Dwajastambha on 31/10/1959 and new Dwajastambha was erected on 30/11/1987 in commemoration of Sri.Konda Pandurangaraju, Mahamantra Samprokh was done on 27/11/1987. That too this temple is renovated by the local people for twice.
>
> The ground level of the temple is below 3 feet to the bed of out side road level. So in rainy season the entire temple is innundated for several days with 3 feet water. So the local, donors are interested to renovate the temple to skip off from such problems.
>
> The petitioner Sri.B.Bala Somaraju was not traced-out and as per the local people version he was not the resident of Gundugolanu".

17. The proceedings of the Office of the Commissioner, Endowments Department, A.P., Hyderabad in R.C.No.SI/42324/2006, dated 28-11-2006 is also placed before this Court and the same reads ad hereunder:

> "Office of the Commissioner
> Endowments Department, A.P., Hyderabad

Rc.No.SI/42324/2006, Date 28.11.2006

Sub: Endowments Department – Sri Bramarambha Malleswara Swamy temple, Gundugolanu (V), Bhimadolu (M), West Godavari District District – Construction of entire Complex – Permission to execute the work under Donor Scheme – Accorded – Plan Approved – Orders – issued.

Ref: Lr.No.A3/9519/2006, Dt:19.10.2006 from the Assistant Commissioner, Endowments Department, Eluru.

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In the circumstances reported by the Assistant Commissioner, Endowments, Endowments Department, Eluru in the reference cited, permission is here by recorded to execute the work for construction of entire complex to Sri Bramarambha Malleswara Swamy Temple through donor by Sri Bhogaraju Pundarikakshudu with the following conditions.

a) The work shall be executed with the funds of the Donor only and no amount is spent on the work in any way from the institution of Endowments Department.

b) The work shall be executed according to the plan and location approved by the Endowments Department. It shall be carried out under the close supervision of the Endowments Department Officials like, Engineers and Sthapathies.

c) The work should be completed with in the stipulated period and should be handed over to the Endowments Department/Temple unconditionally and the Donor will not have any right on the structure/property in any way.

d) The Endowments Department have a right to alter/remove partly or whole structure if it is found essential in future, under any developmental / renovation / improvement, programme of the temple/institution and the Donor shall not have any right to object or claim compensation of the structure constructed by them and handed over to the Department.

e) The constructions will be inspected by Departmental Engineers and action will be taken as per the suggestions of Departmental Engineers and Sthapathies.

f) This department reserve the right of addition/deletion/modification of any/all of the above conditions if found necessary in the interest of the Department/Institution.

A copy of the approved plan is herewith enclosed.

//BY ORDER OF THE COMMISSIONER//

Sd/- N.Vallinayagam

Sthapathi

//f.b.o.//

Head Draughtsman”

18. This Court had given anxious consideration even to the relevant record produced before this Court. The letter, dated 18.08.2006, addressed by respondent No.4-Sri B.Pundarikakshudu, to the Manager; the Manager's representation in Lr.No.76/2006, dated 18.08.2006 with regard to the preparation of plans & estimates of temple; the estimates permission order of the office in L.Dis.No.A3/7771/2006, dated 28-08-2006 had been placed before this Court. The Manager's representation for reconstruction of the subject temple in Lr.No.76/06, dated 19.10.2006; the report submitted to the Commissioner, Hyderabad vide RC.No.A3/9519/2006, dated 19.10.2006 for reconstruction of work through donor; the Commissioner's permission to execute the work on donor's scheme in RC.No.S1/42324/2006, dated 28.11.2006; the plan approval of the Deputy Executive Engineer, Endowments, Kakinada vide RC.No.D1/975/2006, dated 11.10.2006, the Manager's representation requesting permission to dismantle the subject temple in Lr.No.11/2007, dated 31.01.2007; permission orders for dismantling of the subject temple in RC.No.A3/9519/2006, dated 02.02.2007; the petition of Sri Vennavalli Ramachandra Murhty, dated 07-05-2007; and the proceedings of Archeological Department in RC.No.B/89/2007, dated 14-05-2007 also had been perused. The proceedings relating to O.S.No.90 of 2007 and the relevant stands taken in this regard had also been perused by this Court.

19. It may be that when the parties concerned with the Endowments Department are acting deliberately without following the procedure in ordering either dismantling of the Temple or in taking up the reconstruction work of the temple in exceptional circumstances, the Court may interfere. When the *bona fides* of the authorities and also the fourth respondent are clearly reflected from different proceedings and when an action of this nature had been taken in the interest of the public, the writ petitioner cannot be permitted to stall the further proceedings, especially in the light of the specific stand taken by the respondents in their respective counter affidavits that at the instance of some unsuccessful party who was unable to get temporary injunction in a pending suit, the writ petitioner filed the present writ petition.

20. When the *bona fides* of the authorities of the Endowment Department

cannot be doubted, normally the said bona fide actions taken by the authorities of the Endowments Department in the interest of the institution need not be interfered with by a writ court.

21. This Court is thoroughly satisfied that the writ petition is devoid of any merit and accordingly the same shall stand dismissed with costs.

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P.S.NARAYANA,J

Date: 18-12-2007

KLP